

**MINUTES FOR THE BOARD OF ADJUSTMENT MEETING**

January 28, 2011

- I. **ATTENDANCE** - The Vice-Chair called the meeting to order at 1:03 p.m. in the Council Chambers, 200 East Main Street, on January 28, 2011.

Members present were Vice-Chair Kathryn Moore, James Griggs, Barry Stumbo, Janice Meyer, Noel White and Thomas Glover (arrived at 2:30 PM). Chair Louis Stout was absent. Others present were Jim Hume, George Dillon and Mark Newberg, Division of Building Inspection; Chuck Saylor, Division of Engineering; Jim Gallimore, Division of Traffic Engineering; and Rochelle Boland, Law Department. Staff members in attendance were Bill Sallee, Jim Marx, Barbara Rackers and Wanda Howard.

- II. **APPROVAL OF MINUTES** - The Vice-Chair announced that there were no minutes to be considered at this time.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Sounding The Agenda** - In order to expedite completion of agenda items, the Vice-Chair sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Vice-Chair announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.
- a. **C-2010-110: VULCAN CONSTRUCTION MATERIALS, LP** - appeals for a conditional use permit to conduct underground mining of limestone in the Agricultural-Rural (A-R) and Neighborhood Business (B-1) zones, on properties located at 7200, 7210 and 7230 Turner Station Road. (Council District 12)

**The Staff Recommends: Approval of a conditional use for the southerly half of the proposed mining area,** for the following reasons:

1. An underground mining operation confined to this area should not adversely affect the subject or surrounding properties. The area to be mined is immediately adjacent to an existing underground mining and quarrying operation that has been in place for over fifty years. Property to the west and southwest of this area, consisting of several hundred acres of land, is owned and managed by the same landowner that is leasing the land to be mined to Vulcan. All aspects of the mining operation have been located and designed to satisfy concerns of Floracliff Nature Sanctuary, which is located immediately to the south of Vulcan's existing mine and over ½ mile away from the new mining area. Existing residences on the adjoining properties to the east and north will be at least 800' away, which should help to minimize the potential for disturbances from blasting.
2. Excessive noise or dust is not anticipated, as the mining activity will be entirely underground, and reclamation of the site and drainage control will be easily accomplished since only very minor alterations will be needed on the surface of the subject property.
3. The appellant has not had a permit revoked or bond or other security forfeited for failure to comply with any Federal, State or local mining laws, regulations or conditions.
4. All necessary public facilities and services are available and adequate for the proposed use.

**This recommendation of approval is made subject to the following conditions:**

1. Construction and operation of the mine shall be done in accordance with the submitted application, and a revised site plan indicating: (a) an area to be mined equivalent to roughly half of the 107 acres that was originally proposed, with the northerly limit defined by a line extending from the centerline of Grimes Mill Road (as it intersects with Old Richmond Road) in a westerly direction to a point approximately 400' south of the north end of the impoundment of Elk Lick Creek; and (b) a setback of at least 200' to be provided from the impoundment and all portions of Elk Lick Creek.

2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. Surface alterations shall be limited to the construction of air ventilators needed to comply with regulatory requirements, and reasonable access to those sites for construction and maintenance.
4. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
5. The facility shall at all times comply with the provisions of the Mining/Quarrying Ordinance (Code of Ordinances #252-91), as well as all Federal and State regulations pertaining to mining activities, air pollution and waste management, and surface and ground water protection.
6. Blasting shall take place, on the average, no more than once per day, and shall be designed and implemented in strict compliance with all applicable regulatory standards relating to a "scale-distance formula".
7. Upon initiation of underground mining to the north of Vulcan's property, Vulcan shall not concurrently conduct any mining on their property (7430 Elk Lick Falls Road) at a depth greater than level 2 (approximately 300'), or otherwise conduct mining at both locations to the extent that historical levels of production are exceeded.
8. All underground mining on the approved portion of the subject property shall take place at a level 2 depth of approximately 300'.

Representation – Mr. Richard Hopgood, attorney, was present representing the appellant and requested a postponement of the subject appeal until the February meeting. He said three members of the Board had toured the Vulcan facility last week, which indicated the importance of this matter; and that at least one, or possibly two, of the Board members that toured the site would not be present at today's meeting. He felt that, in order to give this matter a full, fair hearing, the entire Board should be present, including the Chairman. Mr. Hopgood noted that they had agreed to a postponement in December, at the request of Mr. Don Todd and the neighbors he represented, to allow them more time to prepare for this case. He reiterated his request for a postponement.

At the request of the Vice-Chair, several persons present in opposition to the case who also opposed the requested postponement stood up.

Ms. Gloria Martin was present and briefly spoke on behalf of counsel Don Todd, whose arrival had been delayed. She addressed the postponement of this appeal in December, citing the short turn-around between meetings (due to the holiday) and the lack of notice to some of the neighbors. She explained, from the standpoint of having served on the Board in the past, that there were times when all of the members could not be present for a meeting; but as long as a quorum was present, the case could be heard by the members in attendance. Ms. Martin said they were prepared to go forward with the case.

Vice-Chair Moore said if there was no objection, she would delay the decision about the postponement request until Mr. Todd arrived.

- b. **CV-2011-2: JANICE MUELLER** - appeals for a conditional use permit to construct and occupy a banquet facility (in conjunction with a winery); and variances to reduce the required front yard from 300 feet to 60 feet along the northern property line and to 125 feet along the eastern property line of Royster Road, and from 300 feet to 75 feet along Winchester Road, for construction of a wine tasting room and a private residence in the Agricultural-Rural (A-R) zone, on property located at 4051 Winchester Road. (Council District 12)

The Staff Recommended: Postponement, for the following reasons:

1. Details regarding vehicles exiting the proposed 150-175 space parking lot, and outdoor entertainment associated with planned events are insufficient to determine whether there will be an adverse impact to this neighborhood. Additional information is necessary to ensure that these related activities will not provide a negative impact to the public.
2. The irregular shape of this lot's frontage has led to a question regarding the true dimensional variance requested for the single family dwelling proposed on the property. The submitted site plan appears to place the dwelling on or adjacent to the right-of-way fence along the Royster Road frontage, although a 60' setback has been requested for that structure.
3. A postponement of this request could lead to additional consideration of the questions associated with the threshold issue regarding the ratio of grape arbor/"tasting room" acreage to

that devoted to the banquet facility, including its off-street parking area. From the staff's perspective, this is an important consideration in evaluating whether the banquet facility can truly be considered accessory to the agricultural and residential uses otherwise permitted on this 13.25-acre property.

Representation – Mr. Nick Nicholson, attorney with Stoll, Keenon and Ogden, was present on the appellant's behalf and requested a one-month postponement, in concurrence with the staff's recommendation. There was no opposition to the request.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Meyer, and carried unanimously (Stout, Glover absent) to postpone **CV-2011-2: JANICE MUELLER** until the February 25 meeting.

- c. **A-2011-6: MILESTONE REALTY CONSULTANTS, LLC** - appeals for an administrative review to determine that an existing sign should be permitted as a "tract sign" at an off-site location in a Neighborhood Business (B-1) zone, on property located at 3600 Winthrop Drive. (Council District 9)

The Staff Recommends: Disapproval, and that the decision of the Division of Building Inspection be upheld, for the following reasons:

1. Tract signs are permitted on a "per street frontage" basis, pursuant to Article 17-6(e)(3) of the Zoning Ordinance. In such cases, Article 17-4(l) of the Zoning Ordinance requires that signs be located and oriented to the distinct street frontage by which the sign is permitted. The subject sign, described as a tract sign by the appellant, is located over ½-mile away from the property being advertised, on street frontage that is not specific to or otherwise a distinct part of the advertised property.
2. There are no provisions in the Zoning Ordinance for a sign of this type, whether treated as a construction sign or a tract sign, to be permitted in a B-1 zone at an off-premise location. Other than some types of exempt signs, such as government signs or political signs, the only type of sign permitted on property separate from the property being advertised is an advertising sign (i.e., a billboard), which is not a sign type permitted in the B-1 zone.
3. The Board is prohibited from permitting a sign type that is not specifically permitted in the zone in which a sign is located, pursuant to Article 17-8(a) of the Zoning Ordinance.

Representation – Mr. Nick Nicholson, attorney, was present representing the appellant and requested a one-month postponement of the subject appeal. Vice Chair Moore asked Mr. Marx if the staff objected to a postponement. Mr. Marx replied in the negative.

Action – A motion was made by Mr. Stumbo, seconded by Ms. White, and carried unanimously (Stout, Glover absent) to postpone **A-2011-6: MILESTONE REALTY CONSULTANTS, LLC** until the February 25 meeting.

- d. **V-2011-9: STEVE TAYLOR** - appeals for a variance to reduce the required number of parking spaces from 22 to 11 for a proposed restaurant and accessory drive-through in a Neighborhood Business (B-1) zone, on property located at 350 Foreman Avenue. (Council District 3)

The Staff Recommends: Disapproval, for the following reasons:

1. Justification has not been provided that specifically addresses and supports that there will be a reduced demand for on-site parking at this location for the type of establishment that is proposed.
2. There is no on-street parking at this location that might partially mitigate for the shortage of off-street spaces that is proposed.
3. Any reduction in required off-street parking on the subject property will increase the likelihood of parking conflicts with the surrounding apartment complex, which has a number of parking spaces for residents in the immediate vicinity of the proposed restaurant.
4. The need for the variance has been created to a significant degree by the appellant's desire to have an establishment with a drive-through facility.

Representation – Mr. Tom Lambdin was present on the appellant's behalf and requested a one-month postponement of the subject appeal. Vice Chair Moore asked Mr. Marx if the staff objected to a postponement. Mr. Marx replied in the negative.

Action – A motion was made by Ms. Meyer, seconded by Mr. Griggs, and carried unanimously (Stout,

Glover absent) to postpone **V-2011-9: STEVE TAYLOR** until the February 25 meeting.

2. No Discussion Items - The Vice-Chair asked if there are any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.

Swearing of Witnesses – At this point, the Vice-Chair asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn.

#### ABBREVIATED HEARINGS:

- a. **C-2011-1: JERRY BARNETTE, JR.** - appeals for a conditional use permit to establish a bed and breakfast facility in the Agricultural Rural (A-R) zone, on property located at 4343 Mt. Horeb Pike. (Council District 12)

The Staff Recommended: Approval, for the following reasons:

1. A four-room bed and breakfast facility is a suitable use for this scenic rural location, and should not adversely affect any of the surrounding properties. An existing residence will be used with no need for any new construction. Ample space for parking already exists in a large paved area conveniently located next to the residence's attached garage.
2. Sewage and garbage will be handled privately, and public services such as police and fire protection are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The four-room bed and breakfast shall be established in accordance with the submitted application and site plan.
2. An occupancy permit shall be obtained from the Division of Building Inspection prior to opening the facility.
3. Sewage treatment and operation of this bed & breakfast facility shall be in accordance with the requirements of the Fayette County Board of Health.
4. The facility shall at all times comply with the conditions set forth in Article 1-11 of the Zoning Ordinance for a bed and breakfast facility.
5. This approval shall become null and void should the appellant no longer reside at this location.

Vice-Chair Moore asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. Jerry Barnette, appellant, was present. He indicated that he had reviewed the conditions and agreed to abide by them.

Ms. Meyer asked about the inspection of the guest log records for the proposed bed and breakfast. Mr. Hume said that would be part of Building Inspection's annual inspection of the b & b facility.

Mr. Griggs complimented the appearance of the property and asked about the "for sale" sign he saw during his site visit. Mr. Barnette responded that the sign, which had been posted there for about two months, had not been picked up yet by the real estate agent; and that the property definitely was not for sale.

Action – A motion was made by Mr. Griggs, seconded by Mr. Stumbo, and carried unanimously (Stout, Glover absent) to approve **C-2011-1: JERRY BARNETTE, JR.** – an appeal for a conditional use permit to establish a bed and breakfast facility in the Agricultural-Rural (A-R) zone on property located at 4343 Mt. Horeb Pike, based on the staff's recommendation and subject to the five conditions recommended by the staff.

- b. **C-2011-3: DIANNE S. GIBSON** - appeals for a conditional use permit to provide family child care for up to 12 children in a Single-Family Residential (R-1E) zone, on property located at 868

Gerardi Road. (Council District 6)

The Staff Recommended: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The site is situated on an eyebrow of Gerardi Road, which should facilitate safe dropping off and picking up of children. Adequate off-street parking will be provided in the appellant's driveway, and street parking by parents is to be monitored to ensure that neighbors' driveways are not blocked. The number of children to be cared for after 6:00 PM will be limited to six, which is no more than what is permitted as an accessory use in the R-1E zone.
2. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. Family child care shall be provided on Monday through Friday for no more than 12 children in accordance with the submitted application and site plan.
2. A certificate of occupancy for the proposed use shall be obtained from the Division of Building Inspection prior to increasing enrollment to between 7 and 12 children.
3. No more than six children shall be cared for after 6:00 PM.
4. The driveway shall be left open for the parking of vehicles, with two spaces to be provided at the end of the driveway near the garage, and the other end of the driveway (toward the sidewalk) to be used primarily for vehicles temporarily parked to drop off or pick up children.
5. The appellant shall advise all parents, verbally and in writing, that on-street parking is very limited, and cannot be done in a manner that results in neighbors' driveways being blocked.
6. Open space to the side and rear of the home (an area of over 5,000 square feet in size) shall be used as an outdoor play area for children, and fenced in accordance with the requirements of the Division of Building Inspection.
7. This approval shall be considered null and void should the appellant no longer reside at this location.

Vice-Chair Moore asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Ms. Diane Gibson, appellant, was present. She indicated that she had reviewed the conditions and agreed to abide by them.

The Vice-Chair acknowledged having received one letter of opposition from a neighborhood resident.

Ms. Meyer asked about the number of child care facilities that operate after 6:00 p.m. Mr. Hume responded that in the last three or four years, there have been a lot of requests for facilities that operate 24 hours a day, to accommodate parents that work the second shift. Ms. Meyer then asked if there had been many complaints. Mr. Hume replied in the negative. After reviewing the neighbor's letter, Ms. Meyer said she felt it would be reasonable to have a 6-month or 12-month review of the child care use, in the event of approval. Mr. Hume said that was not out of the ordinary.

In response to the Vice-Chair, Ms. Gibson said she had no objection to a review in either 6 or 12 months. Mr. Hume inquired whether the Board wanted to have the review in 6 months or 12 months; and if it would be after the date of approval or after the certificate of occupancy is issued. Ms. Meyer indicated that she preferred a 6-month review following the issuance of the certificate of occupancy.

Mr. Marx said the other question to address was the type of review the Board wanted, either with full notice being provided to the surrounding neighbors or an informal report from Building Inspection. Mr. Hume responded that they normally provide an informal report, including any complaints received in the interim.

Mr. Griggs related his understanding that it's only 6 children after 6:00 p.m.; and that anyone is allowed to have 6 children at an in-home daycare 24 hours a day. He said the appellant basically is asking for 6 additional children during daylight hours.

For clarification, Vice-Chair Moore asked whether they would be allowed to keep 6 children around the clock, without the Board's approval. Mr. Hume replied affirmatively.

Mr. James Gibson briefly commented about the Type II facility that they had operated previously, noting that they were down-sizing and moving the child care operation to their home.

Ms. Meyer said she was in favor of this petition but wanted a 6-month informal review of the child care use. Mr. Hume concurred.

Mr. Sallee directed the Board's attention to the draft of a new Condition #8 that was shown on the overhead for review, as follows:

"8. The Board shall review this use 6 months after issuance of a Certificate of Occupancy."

Since there were no further questions or discussion, the Vice-Chair called for a motion.

Action – A motion was made by Ms. Meyer, seconded by Ms. White, and carried unanimously (Stout, Glover absent) to approve **C-2011-3: DIANNE S. GIBSON** – an appeal for a conditional use permit to provide family child care for up to 12 children in a Single-Family Residential (R-1E) zone on property located at 868 Gerardi Road, as recommended by staff, subject to the 7 original conditions, and including the addition of Condition #8 as noted herein.

- c. **C-2011-4: ANGELA and BRIAN SPIERS** - appeal for a conditional use permit to establish a commercial outdoor recreational/horse riding facility in the Agricultural-Rural (A-R) zone, on property located at 2590 Jacks Creek Pike. (Council District 12)

The Staff Recommended: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The outdoor horse riding and training arena will comply with all applicable setback requirements. Noise and traffic disturbances are not anticipated due to the limited scope of the horse riding and training activities that will be taking place. The arena will not have lighting, and no special events or riding shows will be taking place at this location.
2. All necessary public facilities and services are available and adequate for the proposed use, and sewage treatment and garbage pick-up will be handled privately.

This recommendation of approval is made subject to the following conditions:

1. The outdoor riding and training facility shall be built and operated in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The outdoor riding ring shall not be lighted, and shall be used for private horse riding and training purposes only, with no public events such as riding shows or related special events.
4. Sewage treatment shall be provided in accordance with the requirements of the Department of Health.

Vice-Chair Moore asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. Brian Spiers, appellant, was present. He indicated that he had reviewed the conditions and agreed to abide by them.

Action – A motion was made by Ms. White, seconded by Mr. Griggs, and carried unanimously (Stout, Glover absent) to approve **C-2011-4: ANGELA and BRIAN SPIERS** - an appeal for a conditional use permit to establish a commercial outdoor recreational/horse riding facility in the Agricultural-Rural (A-R) zone on property located at 2590 Jacks Creek Pike, as recommended by staff, and subject to the four recommended conditions.

- d. **A-2011-7: STEVE MITCHELL** - appeals for an administrative review to allow a mobile home to be temporarily placed on a property while a permanent single family dwelling is constructed in the Agricultural-Rural (A-R) zone, on property located at 295 Chilesburg Road. (Council District 7)

The Staff Recommends: Approval, for the following reasons:

1. The mobile home will be placed on the property on a temporary basis, and will be removed within 30 days after a Certificate of Occupancy is issued for the permanent residence. In this light, this

temporary structure will serve more as a site construction trailer than a mobile home in the A-R zone.

2. Allowing a mobile home only during the time a permanent residence is under construction will facilitate efforts of the appellant to deter vandals and keep the property secure.

This recommendation of approval is made subject to the following conditions:

1. The mobile home shall be placed on the property as generally depicted on the submitted site plan, in accordance with and only after obtaining all necessary permits from the Division of Building Inspection.
2. All necessary permits for construction of the permanent residence shall be obtained prior to placing the mobile home/construction trailer on the property.
3. The mobile home/construction trailer shall be removed from the property within 30 days after a Certificate of Occupancy is issued for the permanent residence, or within two years following issuance of a building permit for the permanent residence, whichever occurs first.
4. Commercial structures shall not be permitted on the subject property, unless specifically approved by the Board as part of a conditional use, and any accessory structures permitted (or determined to be exempt) by the Division of Building Inspection shall not be used for commercial purposes.

Vice-Chair Moore asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not provided.

Representation – Mr. Steve Mitchell, appellant, was present. He indicated that he had reviewed the conditions and agreed to abide by them.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Meyer and carried unanimously (Stout, Glover absent) to approve **A-2011-7: STEVE MITCHELL** – an appeal for an administrative review to allow a mobile home to be temporarily placed on a property while a permanent single family dwelling is constructed in the Agricultural-Rural (A-R) zone, on property located at 295 Chilesburg Road, for the reasons provided by the staff, and subject to the four conditions recommended by the staff.

- e. **A-2011-8: MICHAEL D. CHILDERS, BUILDER** - appeals for an administrative review to allow a second kitchen in a detached garage/pool house in an Expansion Area Residential (EAR-1) zone, on property located at 200 Kelburn Court (Council District 7).

The Staff Recommends: Approval, for the following reasons:

- a. The property is located in an Expansion Area Residential (EAR-1) zone, which permits a second kitchen as part of an accessory dwelling unit.
- b. The proposed pool house is to include a bathroom, full kitchen, and lounge area that could easily serve as a bedroom. As such, it closely resembles an accessory dwelling unit in terms of design and potential future use.
- c. Regardless of the extent to which the pool house is rented or occupied, it is clearly accessory, based on size and overall design, to the principal residence on the property.
- d. The subject property consists of two lots that have been consolidated to create one larger parcel of  $\frac{3}{4}$ -acre in size. The proposed detached garage and pool house, although over 2,000 square feet in size, will still appear as accessory to the principal residence (over 8,500 square feet) on such a large lot.

Vice-Chair Moore asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not provided.

Representation – Mr. Michael Childers, appellant, was present. He indicated that he had reviewed the conditions and agreed to abide by them.

Mr. Griggs asked if two lots had been consolidated in order to allow this construction. Mr. Childers replied affirmatively.

Action – A motion was made by Mr. Griggs, seconded by Ms. Meyer, and carried unanimously (Stout, Glover absent) to approve **A-2011-8: MICHAEL D. CHILDERS, BUILDER** – an appeal for an

administrative review to allow a second kitchen in a detached garage/pool house in an Expansion Area Residential (EAR-1) zone, on property located at 200 Kelburn Court, for the reasons provided by the staff.

- B. **Transcript or Witnesses** - The Vice-Chair announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

There were none remaining.

D. **Conditional Use Appeals**

1. **CV-2010-100: TOTAL GRACE BAPTIST CHURCH** - appeals for a conditional use permit to expand the parking area; and variances to reduce the required front yard from 30 feet to 0 feet in a Single Family Residential (R-1C) zone and 20 feet to 0 feet in a Planned Neighborhood Residential (R-3) zone, on properties located at 1313 & 1317 N. Limestone Street (Council District 1).

The Staff Recommended: Postponement, for the following reasons:

- a. Additional time is needed for the appellant to consider a modified proposal that reduces the extent of paving proposed in the front yards of each lot, with the goal of maintaining a comparable amount of open space as that provided on the adjoining residential properties.
- b. There are significant questions related to the overall design of the parking areas that are proposed, which should be discussed with the Division of Traffic Engineering prior to the Board's consideration of the conditional use request.
- c. The provision of landscape buffers for the proposed parking lot, whether required by the Zoning Ordinance or otherwise deemed desirable, should be addressed by the appellant. Given the narrow width of the northerly lot, and the limited space between the church building and North Limestone, such buffers may ultimately determine the feasibility and design options for expanding the off-street parking areas for this church facility.

Representation – The appellant was not present for this hearing.

Mr. Stumbo asked Ms. Boland about the options available to the Board, without the appellant present. Ms. Boland replied that the Board may make a decision based upon the information that had been provided on this request.

Staff Report – Mr. Marx stated that the applicant was not ignoring the Board, but instead, is ready to “go back to the drawing board” with the design of the parking lot next to the church property.

The Vice-Chair asked if this application was to be disapproved, if there would be no time delay for a



different application involving this property. Mr. Marx replied in the affirmative.

Action – A motion was made by Mr. Griggs, seconded by Ms. White, and carried unanimously (Stout, Glover absent) to disapprove **CV-2010-100: TOTAL GRACE BAPTIST CHURCH** – an appeal for a conditional use permit to expand the parking area; and variances to reduce the required front yard from 30 feet to 0 feet in a Single Family Residential (R-1C) zone and 20 feet to 0 feet in a Planned Neighborhood Residential (R-3) zone, on properties located at 1313 & 1317 N. Limestone Street, for the following reasons:

**FINDINGS FOR DISAPPROVAL OF  
CV-2010-100: TOTAL GRACE BAPTIST CHURCH**

- a. There is insufficient width on the lot at 1317 North Limestone for a new parking lot with two rows of parking spaces and a center traffic aisle. This proposed design would not be safely functional and does not include any landscaping features required by the Zoning Ordinance.
  - b. The proposed parking in the front yards of both 1313 and 1317 North Limestone would be out of character with well-established residential properties along this section of North Limestone, which typically have front yard green space. It would also significantly reduce the safety and utility of a prominent pedestrian entrance to the existing church building from the North Limestone sidewalk.
2. **C-2011-5: EMBRACE CHURCH** - appeals for a conditional use permit to establish a church in a High Density Apartment (R-4) zone, on property located at 500-508 Maryland Avenue (Council District 2).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Adequate off-street parking is conveniently available next to the building to be occupied for church purposes. No new construction, other than interior remodeling, will be required. Related ministries serving the homeless and those in need will be implemented at off-site locations that have already been established for those specific purposes.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The church facility shall be established in accordance with the submitted application and site plan, with the understanding that the westerly parking lot will be restriped in accordance with the recommendations of the Division of Traffic Engineering.
2. All necessary permits, including those required for interior remodeling and occupancy of the building, shall be obtained from the Division of Building Inspection prior to beginning church services.
3. The building shall not be occupied for any permanent residential use, and temporary overnight stays related to church-oriented activities shall be limited to no more than six nights per year.
4. The church shall not provide, as routine ministries, overnight shelter or food services for the homeless or hungry at the subject property, but is encouraged to continue to support such ministries at other established locations that provide those needed services. Support activities relating to administration/coordination of work efforts may take place on site.
5. Landscaping for the corner parking lot at 500 Maryland Avenue shall be refurbished as necessary to comply with Article 18 of the Zoning Ordinance, subject to approval by the Division of Building Inspection.

Representation – Pastor Rosario Picardo was present on behalf of the appellant. He indicated that he had reviewed the conditions recommended by the staff, and agreed to abide by them.

Objectors – Ms. Rebecca Yann, West Jefferson Place, 535 West Second Street, was present to speak in opposition to this appeal. Ms. Yann said that she represented 80 tenants of West Jefferson Place that asked her to oppose this application. She said that the church's website indicates that this is a homeless ministry that will attract more homeless persons to this area. She said that some currently wander through the halls of West Jefferson Place, and one woman recently had to be removed from one of their restrooms. Others would enter the building at closing time and then refuse to leave. She felt that other such occurrences would threaten the tenants of the building.

Vice-Chair Moore asked Ms. Yann if she had read proposed condition #4 for this use, as listed on the agenda. Ms. Yann said that she did understand that condition, but she feared that even more homeless persons would be attracted to this facility. She said that she was also concerned that the reciprocal parking was insufficient. She said that she would want some written assurance that the church would provide some payment for the use of their parking lot. She said that during tax season, that they have need for their parking spaces, and she was worried about the occupancy proposed for as many as 300 persons for this church.

Appellant's Presentation – Pastor Picardo said that currently the church was meeting at the Kentucky Theatre on East Main Street. He said that over the past two years, they have sought more permanent facilities for their congregation, as they do not have adequate facilities for their children's ministry. They do not have centralized offices for the church, and he equated their arrangement to "living out of a suitcase." He felt that this location would help them grow in the future.

Pastor Picardo said that their congregation does include some that are homeless, but also includes some downtown business people. They also count college students and graduate students among their members, and they have a diverse group of parishioners. He said that they do not plan to have a food distribution ministry at this location, as that would be a duplication of other services provided in the downtown area. He said that they would like to support those activities by other groups. Pastor Picardo said that this facility would allow Embrace Church to provide a Vacation Bible School for neighborhood children in the future, and would allow financial classes as well.

The Vice-Chair asked Pastor Picardo to comment about the shared parking arrangement. He replied that the church would be willing to provide parking attendants on weekends during services.

Mr. Griggs asked if the church intended to lease the entire building. Pastor Picardo replied that the building was a two-story structure of 24,000 square feet. Mr. Griggs asked Ms. Yann if her business was in the same building. Ms. Yann replied in the negative, and said that West Jefferson Place was near to this location. Mr. Griggs asked about the ownership of the building and the parking lot. Ms. Yann replied that her family owns West Jefferson Place, and that there was reciprocal parking with the fitness center use on the subject property, but not one for a church use there.

Ms. Meyer asked about the location of West Jefferson Place, and if these two buildings were located "back to back." Ms. Yann replied in the affirmative and that the rear of each building is physically attached to the other. She said that she would want the Fire Marshall to approve the locking of the door between them, for their security.

Mr. Marx displayed a photograph of the two buildings and the parking lot located on Jefferson Street between the buildings. Ms. Yann described the actual use of the parking lot, and the spaces available for their use. She said that West Jefferson Place also had the use of some parking across the street. She said that on-street parking was also a problem in this area.

Vice-Chair Moore asked if there was adequate parking for the proposed use. Mr. Marx replied that their proposal indicated that the applicant did have six more spaces that the minimum requirement for this use. He said that a restriping of one of the lots was proposed by the staff, meaning that if that were done, then the church might be one or two spaces short of the minimum. Thus, the question remained of the availability of off-street parking in the West Jefferson Place lot for use by this church, especially on Sundays.

Ms. Meyer asked about the connection between the two buildings. Mr. Marx explained, using the aerial photograph, the building proposed for use by the church, and the location of its existing physical connection to West Jefferson Place. He said that the buildings were on separate lots.

Vice-Chair Moore asked if a member of the Fire Department could comment about the doorway connection between the buildings. Capt. Charles Bowen replied that he was not the Fire Marshall, and was not sure of the status of the doorway that had been mentioned. He said that he could check with his colleagues in the Fire Department about that issue.

Mr. Farzin Sadr, architect, was also present on behalf of the appellant. He said that the door in

question is at a stairwell and he thought that there was an agreement that it could remain open. However, he said that it could also be closed, if necessary, although the layout of the building would likely require some modification. With regard to the off-street parking situation, he said that the church was only requesting the occupancy that can be sustained by the level of parking available for the site.

Ms. Yann said that West Jefferson Place did have some Sunday occupancy during "accounting season" when 20-30 spaces would need to be available. However, when Rupp Arena also had events, the remaining parking could become very competitive, and she could not afford to hire security personnel to keep the parking available for her tenants. She said that the parking was used on Sundays.

The Vice-Chair asked if the church was only one or two parking spaces short of the requirement. Mr. Marx said that was true with the restriping recommended by the staff, but that he thought that other off-street parking was available in the area within 300' of this site, including those on West Jefferson Place. Ms. Yann said that she worried that this was the minimum amount of parking proposed, and that the church was actually six spaces short of the requirement. Vice-Chair Moore reviewed the staff report and said that it appears that the church was short one space.

Objectors (cont.) – Mr. Jim McKeighen, 170 Old Georgetown Street, was present in opposition. Mr. McKeighen said that he lives about two blocks from this location. He said that he was also a real estate agent specializing in downtown residential real estate. He said that he works for several churches in various programs, and he knew of the good intentions of the Board of Adjustment, and that most often, zoning variances were good things. However, he had seen where the Board's conditions were not always followed. He worried that parking in this area would be as problematic as that in other nearby areas, where calls to the Police Department were commonplace.

Mr. McKeighen said that this church was actively promoting its outreach ministries, and that if that part of their operation were restricted, how that would justify their purchase of such a large building. He said that the 40508 zip code had more homeless shelters presently than any other part of the city. He attends church, but he respectfully asked the Board to deny this request.

Mr. Bill Johnston, 645 West Short Street, was present to object to this request. He said that he was President of the Historic Western Suburb Neighborhood Association, and that he was also a property owner on West Jefferson Street. He said that the neighborhood opposes the request. He was worried about any activity that increases the "homeless and needy" pedestrian activity on Jefferson Street, as this was currently a problem. He said that much of their congregation currently comprises the homeless and the needy, and he was worried about the limitations for this church, should it be approved at this location. He questioned how the church would work with their congregation in their need.

Mr. Johnston said that there are already many churches in this neighborhood, and that this was a significant property. He said that the \$800,000 valuation assessment for this property would be meaningless for taxable purposes if the property were to be acquired by this church. He said that the loss of the business there would have the same effect.

Like Mr. McKeighen, Mr. Johnston said that he worried about the enforcement of the proposed conditions if this use were to be approved. He thought that they might be unenforceable by the Building Inspector, as many of the problems were likely to occur on evenings and weekends at this location, when there would be no staff members available. He said that their enforcement of "non-building" issues was not as strong as for building-related issues. Mr. Johnston thought that some of the conditions were vague and difficult to enforce. He said that the existing fitness center was a conditional use, but the surrounding buildings on Maryland Avenue are zoned R-1E. He thought that the existing R-4 zoning of this property was an anomaly, and inconsistent with the majority of Single Family Residential zoning on this street.

Mr. Johnston said that other churches in this area had vacant lots next to them, where houses used to be. He thought that the houses were more important to the neighborhoods, and worried that the houses near this site might be vulnerable, if a church were approved at this location. He thought that the focus on this block should be for the neighborhood. He said that Maryland Avenue was

fragile, and he asked the Board to disapprove this request.

Mr. Joe Childers, attorney, 99 Hampton Court, spoke in opposition to this appeal. He said that he and his wife reside about two blocks from this location. Mr. Childers said that he fully supports the mission of Embrace Church, and that they are doing good work as a new congregation, but he did not believe this was the best location for a church. He said that Jefferson Street was enjoying revitalization, and the street had several new businesses that have opened within the past 2-3 years. He said that it was now much better than it had been in the 14 years he had been a neighborhood resident, and he worried that this request would be "going in the wrong direction." He said that there are a number of homeless persons in the area presently, and that the neighborhood had more than their fair share. He thought that this would increase that condition. He asked the Board to deny the request.

Mr. Tim Mellin, 450 West Second Street, and owner of several buildings across from the Jefferson Center, spoke in opposition. He said that they had resided in the neighborhood for more than 25 years. He thought that the Jefferson Fitness Center was an asset to the neighborhood, but to lose that part of the neighborhood would hurt. He worried that the church would be difficult to rein in, should they be allowed to locate in that building. He too, thought that the neighborhood was fragile, but currently moving in the right direction. He said that the church would have different parking needs from the Fitness Center.

Mr. Mellin said that Broadway Christian Church had an established homeless ministry, and that Second Street serves as a conduit for the homeless. The proposed use would impact the neighborhood, in his opinion, including in the competition for parking spaces for vehicles. He hoped that the use of this building would still be a neighborhood asset.

Appellant's Rebuttal – Mr. Scott Reinhart, assistant treasurer for the church, said that the impression had been given to the Board that their entire congregation was homeless, and that was not the case. He said that the homeless comprised only 10%-15% of their usual attendance of about 150 persons on any given Sunday. He understood the neighborhood's concern, but he did not feel that a new homeless population would "be unleashed" upon these residents. He said that during the week, it was proposed that there would be outreach ministries for their members, including a program called "Alpha" for adults on Wednesday evenings. He said that it was designed for spiritual enrichment to all faiths. He said that the church also offers financial counseling.

Mr. Reinhart said that their research had shown that there was a large number of single mothers in this neighborhood, and that the church hoped to reach out to them as well. He thought that, if the neighborhood were truly fragile, that this church would be just what the neighborhood needed. He said that the Distillery District had been cited as a good example of redevelopment, and that their church goes could actually patronize the area businesses, including those new ones located on Jefferson Street. He thought that they would partner with other groups to provide meals, probably at Phoenix Park. He said that their congregation was educated and diverse, and is not comprised totally of the homeless.

Objectors (cont.) – Ms. Twyla Martin, 25-year resident of Maryland Avenue, spoke in opposition to this request. She said that the church's program looks good, according to their website, but she was still concerned. She recalled the neighborhood's efforts years ago to downzone the properties on Maryland Avenue. She said that neighbors are important, but there was already a church located on Maryland Avenue that competes for the available parking spaces. She worried about a second church locating on this street. She said that past church activities were held on Wednesday evening, Thursday evening, Saturday and Sunday, including revivals with busloads of people attending. She said that the church also had parties and entertainment activities. She did not feel that this use was "a good fit" for the residents of Maryland Avenue.

Vice-Chair Moore asked if the church would be agreeable to being limited to only being approved for a church at this location. Pastor Picardo said that they would be in agreement with such a limitation.

Ms. Yann distributed a petition at this time to the Board with 24 signatures in opposition to this conditional use permit.

Mr. Ben Gallagher, 227 Miller Street, was present to speak in opposition. He asked about the staff's findings. He said that the 2001 Comprehensive Plan and that the 2007 Comprehensive Plan both made recommendations for land use for this block. He asked why those were not part of the Staff Report to the Board. Mr. Marx replied that in some cases, the Comprehensive Plan was an important factor in a BOA case, but that the legal standard for a proposed conditional use was more concerned with adverse impacts to the nearby neighborhood from the requested activity.

Mr. Gallagher said that he reviewed both documents that this area was recommended for high density residential use (2001 Plan) and for Downtown Master Plan Use (2007 Plan) which was also for higher density residential or mixed use. He did not feel that the proposed use would further those recommendations. Mr. Marx replied that the Fitness Club mentioned by others, was cited as an asset for the neighborhood, which would not have been allowed to expand years ago, under such logic. Mr. Gallagher said that the Master Plan recommended retail uses, as part of the allowable mix, at this location, and that the Master Plan recommendations should be followed at this location, in his opinion.

NOTE: Mr. Glover arrived at this time.

Mr. Seth Brewer, 629 Headley Avenue, said that he was the President of the Northside Neighborhood Association. He was not necessarily here to oppose this use, but that he worried that the amount of the neighborhood's concerns warrant, at the minimum, a postponement of this application.

Ms. Karen Du Pre, realtor and resident of Fayette Park, and member of the Board of the Northside Neighborhood, said that she had similar meetings and discussions with Vineyard Church when they sought approval of a church location on West Sixth Street. She said that it was difficult to sell a house that was adjacent to a church or a school. She asked the Board to work with her neighborhood, and envision how they would feel if they were in a similar situation.

Mr. Keith Clark, 30-year resident of the area, said that he had acquired several properties in the area, including that for the Grey Goose bar on Jefferson Street, which was somewhat of a "snowball" for the recent revitalization in this area. Mr. Clark said that he owns the property where the wine bar was located as well. He thought that the neighborhood had ascended and descended over the years. He said that the Board needed to understand that this area was truly saturated with agencies that support the public. There were a number of churches and social service agencies located in this area. Panhandling was common in this area, and several folks use Jefferson Street to get from these locations. He worried that the church could exacerbate this situation, if approved. He said that "his backyard" was already full, and that it was just starting to "come back" at this time.

Appellant's Rebuttal (cont.) – Mr. Scott Reinhart said that they are not a social services agency. He said that they are "regular people" and would refer persons in need of those services.

Objectors (cont.) – Mr. David Doucoumes, resident of Sutherland Drive and builder of several townhomes on Miller Street, was present to object to this request. He said that he was surprised that the staff didn't have a good grip on this issue as he thought was required. He said that if downtown is to become vital, we have to pay attention to what actually is going to help. He thought that a mixed use was not the highest and best use of this property. He said that most churches are to come before the Board to seek approval, and that many morph into something different once established. He didn't think that this use would be of help to Jefferson Street.

Citizens in Support – Mr. Dan Atkinson, member of Embrace Church, spoke in support of this request. He wanted to reassure the business owners in this area that church members would patronize those businesses. He said that the church wanted to work with the neighborhood and become a member of the neighborhood as well. He said that he was pleased to hear that the neighbors were supportive of the church's ministry. He said that the church wanted to serve this neighborhood.

Action – A motion was made by Mr. Griggs, seconded by Ms. Meyer, to disapprove **C-2011-5: EMBRACE CHURCH** – an appeal for a conditional use permit to establish a church in a High Density Apartment (R-4) zone, on property located at 500-508 Maryland Avenue, for the following

reasons:

**FINDINGS FOR DISAPPROVAL OF  
C-2011-5: EMBRACE CHURCH**

1. The applicant has stated a need and desire to build their church membership, but the parking available on the site is barely adequate to meet the minimum requirements. Use of this facility as a church in a neighborhood where parking can already be a problem is a potential risk of a severe adverse impact on this re-developing neighborhood.
2. The subject property is surrounded by residential, single-family and neighborhood businesses and already existing institutional or assembly type facilities, which are currently thriving and redeveloping. The increased traffic demand of a church of this size would be too intensive at this location.

The votes on the motion were as follows:

Ayes: Griggs, Meyer, Stumbo, White

Nays: Glover, Moore

Absent: Stout

The motion for disapproval carried, 4-2.

NOTE: The Vice-Chair declared a recess at 2:40 PM. She reconvened the meeting at 2:54 PM with the same members present.

3. **C-2010-110: VULCAN CONSTRUCTION MATERIALS, LP** - appeals for a conditional use permit to conduct underground mining of limestone in the Agricultural Rural (A-R) and Neighborhood Business (B-1) zones, on properties located at 7200, 7210 and 7230 Turner Station Road (Council District 12).

The Staff Recommends: Approval of a conditional use for the southerly half of the proposed mining area, for the following reasons:

- a. An underground mining operation confined to this area should not adversely affect the subject or surrounding properties. The area to be mined is immediately adjacent to an existing underground mining and quarrying operation that has been in place for over fifty years. Property to the west and southwest of this area, consisting of several hundred acres of land, is owned and managed by the same landowner that is leasing the land to be mined to Vulcan. All aspects of the mining operation have been located and designed to satisfy concerns of Floracliff Nature Sanctuary, which is located immediately to the south of Vulcan's existing mine and over ½ mile away from the new mining area. Existing residences on the adjoining properties to the east and north will be at least 800' away, which should help to minimize the potential for disturbances from blasting.
- b. Excessive noise or dust is not anticipated, as the mining activity will be entirely underground, and reclamation of the site and drainage control will be easily accomplished since only very minor alterations will be needed on the surface of the subject property.
- c. The appellant has not had a permit revoked or bond or other security forfeited for failure to comply with any Federal, State or local mining laws, regulations or conditions.
- d. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. Construction and operation of the mine shall be done in accordance with the submitted application, and a revised site plan indicating: (a) an area to be mined equivalent to roughly half of the 107 acres that was originally proposed, with the northerly limit defined by a line extending from the centerline of Grimes Mill Road (as it intersects with Old Richmond Road) in a westerly direction to a point approximately 400' south of the north end of the impoundment of Elk Lick Creek; and (b) a setback of at least 200' to be provided from the impoundment and all portions of

- Elk Lick Creek.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
  3. Surface alterations shall be limited to the construction of air ventilators needed to comply with regulatory requirements, and reasonable access to those sites for construction and maintenance.
  4. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
  5. The facility shall at all times comply with the provisions of the Mining/Quarrying Ordinance (Code of Ordinances #252-91), as well as all Federal and State regulations pertaining to mining activities, air pollution and waste management, and surface and ground water protection.
  6. Blasting shall take place, on the average, no more than once per day, and shall be designed and implemented in strict compliance with all applicable regulatory standards relating to a "scale-distance formula".
  7. Upon initiation of underground mining to the north of Vulcan's property, Vulcan shall not concurrently conduct any mining on their property (7430 Elk Lick Falls Road) at a depth greater than level 2 (approximately 300'), or otherwise conduct mining at both locations to the extent that historical levels of production are exceeded.
  8. All underground mining on the approved portion of the subject property shall take place at a level 2 depth of approximately 300'.

Note: A video recording of this public hearing is available for viewing at [www.lexingtonky.gov/CityGovernment/Council Clerk's Office/View Meetings Online/Archived Meetings/Board of Adjustment/2011/Board of Adjustment Meeting/1-28-11/Video](http://www.lexingtonky.gov/CityGovernment/CouncilClerk'sOffice/ViewMeetingsOnline/ArchivedMeetings/BoardofAdjustment/2011/BoardofAdjustmentMeeting/1-28-11/Video).

Mr. Don Todd, on behalf of the Old Richmond Road Neighborhood Association and the Historic Boone Creek Neighborhood Association, noted their opposition to postponing Vulcan's hearing. He said that representatives for Vulcan had approached the Board of Directors of Floracliff Nature Sanctuary as early as April to explain their intent to expand the mining operation and to ensure that they had no opposition to that plan. The remaining property owners in the area did not receive notification of this request until shortly before the December Board of Adjustment meeting and had only one month to prepare. He said that they had spent countless hours in preparation and there were a number of people present in opposition who had other commitments, jobs, etc. It was his opinion that the case needed to go forward, and just because one Board member was not present, it was not sufficient reason to postpone the case, particularly if a quorum was present.

Ms. Moore then asked that Mr. Todd and anyone else who had not been present at the time of the swearing of witnesses to stand and be sworn. She administered the oath to those standing.

Ms. Moore asked if Counsel had a recommendation regarding the postponement request, to which Ms. Boland responded that she did not. Ms. Moore then asked the Board if anyone saw a need to postpone the case to the following meeting, which also received a negative response. Ms. Moore noted that several people had taken the time to attend the meeting; and although it was unfortunate that Mr. Stout was unable to be present, there would be two Board members in attendance who had toured the facility.

Mr. Hopgood said that if the decision was made to go forward, they were prepared to make a presentation. He added that, in order to allow time for Mr. Glover to arrive, if there were any cases that followed Vulcan on the agenda and that required discussion, the others could be heard first, as Vulcan's was expected to be a lengthy discussion.

Ms. Moore asked Counsel for guidance, to which Ms. Boland responded that the Board should either deny or approve Mr. Hopgood's request.

Action: A motion was made by Mr. Stumbo, seconded by Ms. Meyer and carried 5-0 (Glover and Stout absent) to deny the request for a postponement for C-2010-110: Vulcan Construction Materials, LP.

Representation: Mr. Hopgood told the Board that he would provide an overview of Vulcan's application and operation, as well as the issues that should be addressed. He introduced several representatives of Vulcan Materials who were available to answer any technical questions that might arise: Mr. Jim DeCinque, Vulcan Area Manager and a registered geologist, who has more than 25 years of limestone mining experience; Carl Van Hoozier, Government and Media Affairs Director for Vulcan's Mid-South Division (based in Knoxville, TN), who has the divisional responsibility for Kentucky; Dr. Braden Lusk, Ph.D, Professor of Mining Engineering at the University of Kentucky (a certified blaster in the state of Kentucky, who has done work for the Department of Homeland Security and the Department of the Navy to develop blast-resistant products for those agencies); Dr. Kott von Unrug, Ph.D, Professor of Mining Engineering at the University of Kentucky, with an area of expertise in rock mechanics; Craig Morgan, an area engineer, who has done noise assessment of Vulcan's operation and provided traffic information for Old Richmond Road; and David Jackson, M.S., a registered geologist (from Nashville) with an area of expertise in hydrology and a long background in limestone mining and other areas of geology.

Mr. Hopgood noted that, due to the late hour and the number of people that were present to speak, he would provide only a brief overview of Vulcan's application. He noted their agreement with the conditions recommended in the staff's report and said that he would like to add language to two conditions at the appropriate time in order to clarify some issues.

Mr. Hopgood explained that Vulcan is a publicly traded company that is headquartered in Birmingham, AL, although they have Divisions and operations nationwide. It is the country's largest producer of construction and aggregate limestone. They have a Divisional office in Knoxville, TN, and operate a number of quarries in Tennessee, one in the Carolinas, some in other parts of Kentucky and three here in Lexington-Fayette County. There are about 25 employees for their Lexington operations; and that number fluctuates, based on the economy and the demand for production. Vulcan provides limestone for public projects such as roads, schools, hospitals, etc., which accounts for about half of their production. The remaining half goes to residential and commercial development. Mr. Hopgood wanted the Board to be aware that the two more well-known operations in Lexington (Central Rock on Manchester Street and the Old Richmond Road facility) are very community-oriented and participate in the "Adopt-a-School" program, providing financial contributions, as well as time and training, to two local elementary schools.

Mr. Hopgood said that Vulcan owns about 130 acres of property at the Old Richmond Road facility, which is located on Elk Lick Falls Road. He explained that it is an underground facility that Vulcan acquired in 1958, noting that many of the area residents had likely moved there since Vulcan purchased the property and began its mining operations at that location. Mr. Hopgood explained how the mining operation is conducted and that Vulcan's limestone is used around the country, noting that it is what would be considered a "base commodity" – i.e., that it is needed in virtually every phase of construction. He said that it is important that there be local quarries to serve the market and allow aggregate limestone to be produced on a competitive basis. Otherwise, the cost of stone would become prohibitive and/or would have to be obtained from elsewhere, which means more truck traffic coming into the county and less tax dollars going into the local economy.

Mr. Hopgood explained that permits must be obtained and maintained, all of which have standards that must be complied with: mining and blasting are regulated by the non-coal branch of the Kentucky Department of Mines and Minerals; employee safety and health is monitored and regulated by MSHA (Mining Safety and Health Administration, who also regulates the coal industry); air quality (dust control) is regulated by the Division of Air Quality; and water is managed through a closed system, which is regulated by the Kentucky Division of Water. He said that Vulcan has all the permits that are required to operate and is consistently in compliance with those permits. Vulcan also has a point discharge (NPDES) permit from the Division of Water to discharge water, when necessary, into Elk



Lick Creek. This is done only occasionally (only four times within the last two years), generally after periods of heavy rainfall, when the water level in the underground storage vault must be reduced. Records are kept of all discharges, and independent testing of the water for suspended solids, such as oil and grease, is done prior to its discharge into the creek.

Mr. Hopgood noted that two of the Board members who were present had been able to tour Vulcan's Old Richmond Road facility the previous week, which he thought was immensely important in understanding how the limestone is produced. He said that he had two brief videos to present, which would help the other Board members to see how the quarrying operation is conducted, since they were unable to be present for the mine tour. He explained that the type of operation used by Vulcan is known as the "room and pillar" method of mining and explained how that is done, including preparation; blasting; rock removal; ceiling stabilization and dust control (both surface level and underground). He compared the interior of the mine to Mammoth Cave as opposed to a coal mine, as there is sometimes 65 feet of space between the roof and the floor on any given level. He said that right now mining is being conducted on Level 2 of the 130-acre site (about 300 feet below ground level), as Level 1 (which is about 150 feet below the surface) has been mined out. There is a layer of solid limestone about 90 feet in depth between the two levels, which provides the roof/ceiling of one level and the floor of the one above, and is typical of such operations.

Typically, at the Richmond Road facility, mining is done five days per week and might be done on weekends if there is a specific highway project underway; however, during a recession, rock is not mined at that level of operation. Hours are generally from 7:30 AM until 5:00 PM, and blasting is done no more than one time per day, usually at the end of the day. This is to maintain consistency and to allow employees to leave the mine prior to the blasters preparing for the day's blast. The material that is produced is removed the following day (approximately 1,400 to 1,600 tones per day, sometimes up to 4,000 tons per day). Mr. Hopgood explained how the entire operation works, how they move from one area of the mine to the next, and how each area is prepared for blasting and rock removal.

Blasting is regulated by the Commonwealth of Kentucky, and all blasters employed by Vulcan are certified and licensed by the State. State law dictates the amount of blasting material that can be used, based on what is known as the "scale-distance formula," (the closest distance to a residential structure not owned by Vulcan from the property boundary), designed to prevent property damage. Records of the blasts are kept by Vulcan, as are seismograph records of the vibrations from the blasts. There is a State standard for vibrations, called the "peak particle velocity (ppv)." This is a measure of the vibration experienced at the point where the seismograph is located, which is at a residence near the northwest corner of the property (the residence that provides the base for the scale-distance formula). Mr. Hopgood told the Board that the blast conducted at the time the Board members were present the previous Friday, which was a "3-header" blast, did not even trigger the seismograph located on that property. In fact, it registered 0.05 ppv, whereas the State standard for acceptability is 2.0 ppv. He said that a 0.05 reading is not unusual for Vulcan; and if there were any detailed questions regarding blasting, Dr. Braden Lusk was present and would be able to answer those questions.

In response to a question from Ms. Moore, Mr. Hopgood verified that the previous week's blast was done on Level 2. She asked if they want to expand to Level 1, to which he replied that the proposed expansion will be into the adjoining Anderson property, at a level commensurate to the level where they are currently mining (i.e., no closer to the surface than about 300 feet). He added that they would like to clarify language in one of the recommended conditions, to say "Level 2 on the Anderson property" as opposed to the existing language of "average depth of 300 feet." He explained that that would be much more enforceable and would be more consistent with the existing floor and roof of Level 2, noting that this was important for rock stability purposes. He said that they agreed to the staff's recommendation to limit the operation to 53 acres, rather than the 100± acres they had originally requested, displaying the referenced area on the overhead. He also noted the 200-foot

buffer area that is to be maintained around the area proposed for mining.

Mr. Hopgood said that their plan is to continue mining from Vulcan's property into the permitted area, should the conditional use permit to expand be granted. It would be done in the same "room and pillar" method of mining as is being done on Vulcan's property, noting that that is an industry standard nationwide. This application will not involve any surface use of Mr. Anderson's property unless it is determined that an air (ventilation) shaft is needed for safety purposes. That will be determined at a later time, based on testing of the air quality in the mine. Mr. Hopgood said that air and dust control are a key component of underground regulations. Ventilation is highly regulated by MSHA, and regulations are constantly changing; therefore, it will not be known until a later date whether or not a ventilation shaft is even needed for the new 53-acre area. If needed and implemented, the ventilation shaft will be fenced off for security purposes; and security is on site nightly to ensure that no one enters the property. The mining process will be the same, meaning that the rock will be severed underground and brought to the surface on Vulcan's property. Nothing other than the possible construction of the air shaft will change on the surface of the Anderson property. Once mining is completed on that property, it will be removed.

Mr. Hopgood referenced the 1988/1989 Board of Adjustment case when Vulcan asked to expand its operation. He said that that request involved going under Elk Lick Creek into a much bigger area than is being requested with this application. There were lengthy hearings, and a great deal of history was associated with that request. He acknowledged that there would be discussion at this hearing about truck traffic and blasting and said that, if those two issues could be set aside, he could/would summarize the issues that were the main source of contention (then and likely would be now) that caused the previous application to be withdrawn.

He said that in 1988/1989, Vulcan did not use what would be commonly thought of as Best Management Practices (BMPs) for storm water runoff. Over time, limestone aggregate had washed off the property into Elk Lick Creek. That should not have happened, but it did; and it had occurred for a lengthy period prior to 1988. He said that Vulcan's level of compliance has changed dramatically since the late 80s, and continues to change on a daily basis. One of the primary directives from Vulcan's management is to operate in compliance with all laws and regulations, including Best Management Practices; and according to Mr. DeCinque, who has been the Operations Manager for the past five years, employee safety and compliance is a major part of Vulcan's daily operation. Mr. Hopgood then described a second situation that had occurred prior to the previous application. Vulcan had mined off the boundaries of its property, under Elk Lick Creek, into property owned by Dr. Mary Wharton (i.e., the Floraciff Nature Sanctuary). It is not known why that happened; but Mr. Hopgood said that, as technology has changed over the years with laser equipment and GPS, surveying has become much more precise and dependable. For whatever reason, they mined off their property and should not have.

After the 1988/1989 application was withdrawn, Mr. Hopgood said that Vulcan met with Dr. Wharton and worked out a settlement. Elk Lick Creek has since been cleaned up and has remained so. A limestone berm is now on Vulcan's property, which directs storm water back onto their property and into the mine, thereby protecting the creek. Mr. Hopgood said that Vulcan asked Dr. Wharton how it should specifically be done, and she directed the cleanup procedure and advised what machinery should be used. Much of the labor was done by hand in certain areas, and nature took care of the rest. He added that Dr. Wharton was compensated for the stone that had been removed from her property (mineral rights), which was part of the settlement. Anticipating that some day mining might occur on her property, she wanted to be sure, if it did, that it would be done only in certain areas; and that good mining practices would be used, considering the environmental factors of Elk Lick Creek, as well as her property. To that end, she requested that an independent mining engineering firm do a study to establish that Vulcan's mining plan be consistent with good mining practices. If that was done, she, or those in charge of the nature sanctuary after her death, would not oppose a future application to expand the mining operation. That study, done by Marshall Miller and Associates at the

Floracliff Board's request, had been prepared and was submitted as part of Vulcan's current application. It was noted by Mr. Hopgood that, after a lengthy tour of the mining facility by Marshall Miller representative(s), Ms. Beverly James (the Floracliff Preserve Manager), Floracliff's Chair of the Board, and others (including a member of the State Nature Preserve), Floracliff's official position was that it did not oppose this application.

In addition to the truck traffic issues (which would be discussed) and the blasting issues from the 80s (which would also be discussed), Mr. Hopgood said that there had been an earlier allegation that Vulcan's mining operation had diverted water from Elk Lick Creek. He said that Vulcan did not agree with that contention and that Mr. David Jackson, who had done some analysis of the situation, was present to discuss that issue. It was Vulcan's position that what they are doing now (and what they propose to do) will not have any impact on groundwater. There is a natural 18-inch layer of bentonite (volcanic ash material) above the roof on the first level in the mine that seals off the area below from groundwater flow. He said that bentonite is typically used for liners in lakes and ponds, as it is impermeable. The study that they have submitted shows that the mine is a dry mine. Any water in the mine is surface water that has been directed back into the mine – not groundwater – and this would be discussed later in the hearing.

With regard to conditions recommended by the staff, Mr. Hopgood repeated that they were in agreement, with the exception of two minor changes. One had been discussed earlier, and the second was in reference to the timing of the mining operation. He said that they had agreed to not mine on the Anderson property and below Level 2 on their property at the same time, other than to create a decline down to Level 3 in the event that it was decided in the future to not mine any more than the 53 acres proposed with this application. The decline itself would involve mining, as the rock would have to be blasted and removed, just as it is done in the regular mining operation. He said that the removed rock from the decline is marketable, but not for State projects. It can only be used for residential and commercial projects. So, in essence, mining would be done, but not at the scale at which it would be on an already created mine floor. It would only be done to get to the next level for preparatory purposes, as otherwise there would be a lapse of perhaps five years in mining while the decline was being constructed.

With regard to trucking operations, Mr. Hopgood said that Vulcan does not own any trucks and does not make deliveries of limestone. All deliveries are contracted to other companies or to individual haulers. Vulcan has strict regulations with regard to tarping of loads while trucks are on their property; but once a truck leaves the premises, they have no control over what a trucker does or doesn't do with regard to loads of limestone.

In closing, Mr. Hopgood said that Vulcan had had no bonds forfeited, they consistently operate in compliance with all regulations and permits and any complaints they receive are addressed. He said that a complaint had been filed that week with the Department of Mines and Minerals, thought to be from someone in the neighborhood. An inspection was done by Mines and Minerals the previous Tuesday and they got a clean report. A second complaint was filed with the Division of Water by a neighbor regarding this application. That agency was on site for two hours on Thursday, along with an inspector from the LFUCG. They didn't leave a report, noting that it would be filed in 7 to 10 days, but they told the managers who accompanied them on the inspection that everything was in order. All requested reports and other exhibits had been filed with the application and were part of the record of this hearing.

In response to a question from Mr. Glover regarding truck traffic counts, Mr. DeCinque said that in the busy season (summer 2007 or 2008), when there was a lot of construction going on, there were probably, on average, 75 to 100 one-way trips daily. He said that if information for a specific time period was desired, he could provide that information to the Board. In response to a second question from Mr. Glover regarding production, Mr. Hopgood said that that information was part of public

record and could easily be obtained. A third question regarding production records was answered by Mr. Ken Hayslick, Property Manager for Vulcan Mid-South. He said that every year they have their underground work surveyed. They provide all required information to Building Inspection, in addition to a Department of Revenue mineral tax summary that is provided to the State for the previous three years of production. Mr. Hopgood added that they actually pay a severance tax to the State of Kentucky; and for 2009, \$460,000 in taxes were paid to the State, which is 4.5% of their revenue. Half of that amount comes back to Fayette County, which is one reason it is beneficial to have these operations in Lexington. Mr. Glover explained the reason for these questions: that he would like to have some data available in public records for anyone interested, so that technical data would not have to be interpreted by a lay person, as well as a way to provide a measure of compliance with Vulcan's conditional use permit with regard to levels of production (referencing recommended Condition #7).

Mr. DeCinque responded that some of the information Mr. Glover was requesting was sensitive and confidential, in that competitors would like to have that information for their own production purposes, and he was unwilling to provide it in the format requested. He said that a survey from year to year of areas mined would be easy to provide and, in fact, already was provided to Building Inspection. Overlaying those surveys would be a good way to see what had actually been taken out of the mine and was easy to interpret. The numbers requested by Mr. Glover would therefore be provided, but they would be tied to production, as opposed to actual sales. Mr. Hume (Building Inspector) commented that that would be a sensible way to provide the information and could be noted as a line item on each map from year to year. Ms. Moore added that it would also make sense to add "annual," making it read "historical high annual production." It was noted that the mining year could also be added for further clarification.

Mr. Glover had several other operational and/or technical questions, all of which can be reviewed on the video of this hearing. A response to each question was provided by either Mr. Hopgood or Mr. DeCinque, with the exception of one question regarding blasting records. That response was provided by Dr. Braden Lusk, who noted that records must, by State law, be kept on site for five years and be made available to the State for that period of time. Mr. Glover asked how anyone might obtain that information. Mr. DeCinque replied that, since that had not been done historically by Vulcan, he would prefer that it be handled by someone with the City, for public access, as Vulcan was not set up as a corporation to be able to handle public record requests. Mr. Hopgood added that that information could be filed with Building Inspection, along with their other records, with which Mr. DeCinque agreed.

In response to a question about karst geology, Mr. David Jackson explained the nature of karst, noting that Fayette County has a high amount of karst geology, which is related to the presence of sinkholes. He said that there is a large amount of karst activity in the general area of Vulcan, and it is mapped on USGS quadrangle maps. Karst geology is confined to the uppermost levels of the land (near the surface), and there is no evidence of any below the surface. He added that there are no sinkholes mapped on the subject property or on Vulcan's property, although there is some karst located in the northwest part of the Elk Lick Creek watershed, on the other side of Interstate 75.

In response to a question from Mr. Todd, Mr. Jackson said that he did not know if a map was filed by Vulcan showing the karst in the area where the sinkholes are located, or if the Mining and Quarrying Ordinance even requires that.

Ms. Moore asked the Board members if they had any questions for the applicant before proceeding to testimony from the Opposition.

Board Questions:

Mr. Griggs asked about the industry calculations contained in the Marshall Miller report and what was meant in the report when it referred to the life of the mine. He was concerned about the room and pillar method of mining, noting that more rock was taken out than left in for support within the mine. He said that it was hoped that Floracliff would last forever, and therefore it was hoped that the mine would be stable forever. It was his belief that if there were any catastrophic mine failure, that it would affect the Elk Lick Creek and the Nature Preserve.

Dr. Kott von Unrug responded, noting that this was his area of expertise. He compared the “rooms” in the mine to the catacombs in Rome, noting that they were more than 2,000 years old and still standing and in good shape. He said there were also other cultures that dug into stone; and although there was a difference in scale, it was the same concept. He noted that the safety factor in limestone mining was very high, and there were no known cases of limestone mine collapse in the United States.

Mr. Griggs asked, from the information in the report, if the engineering for the pillars was calculated based on any type of time span. Dr. von Unrug responded that there has not been any civilization around long enough to make that calculation or to measure “forever.” He then compared the mine to Mammoth Cave or other caves that have been around for thousands of years, noting that they were still standing and in good shape.

In response to other engineering questions and concerns expressed by Mr. Griggs, Dr. von Unrug said that all mining decisions are based on what is known, not on fear of what is not known, and they are supported by history. Stone mining in the United States has been around for hundreds of years. There is good evidence of what happens where, and nothing in that evidence to support the fears that Mr. Griggs was expressing with regard to the mine and its relationship to Elk Lick Creek and Floracliff. With regard to any question of water in the mine, Dr. von Unrug said that if a mine is filled with water, it actually helps to stabilize it, as the pressure of the water actually helps to support the rock.

Mr. Griggs then asked Mr. Hopgood, based on maps contained in the Marshall Miller study, if the study was laying the basis to possibly cross Elk Lick Creek for mining purposes. Mr. Hopgood responded that that was not part of their plan – either short-term or long-term, as that would raise issues they preferred to not deal with. Mr. Griggs asked about the time frame for mining, relative to the results contained in the study. Mr. DeCinque explained their plan, referring to the settlement with Dr. Wharton, and noting that they did not plan to mine under the creek or even closer than 200 feet to Elk Lick Creek.

At this time, Mr. Hopgood entered into the record the curriculum vitae for Drs. von Unrug and Lusk.

In response to a question from Mr. Griggs regarding ground water seepage and how it figures in Vulcan’s mining process, Mr. Jackson said that there is no seepage into either Level 1 or Level 2; he explained how groundwater moves through rock, noting that where there is no rock porosity or there are no fractures, there is no water transmission. He said that he observed the interior of the mine on all levels, and he disagreed with the remark in the study/report about the possibility of water seepage.

Mr. Griggs also asked about the potential for noise from the vent. In response, Mr. DeCinque said that it was not a noise generator, as the fans are installed underground, on the level where the work is being done, drawing air in from the outside. He repeated that the vent may not even be needed – that testing of the underground air quality would determine if that was the case.

Mr. Stumbo asked how long Vulcan could mine at this location without expanding into the Anderson property. Mr. DeCinque said that it would depend on market conditions; but based on current levels of production, in conjunction with market conditions, approximately 5 to 6 more years on Level 2, and possibly 15 to 20 years on Level 3. A fourth level is also a possibility; but the deeper the mine, the

more expensive the operation and therefore, the more expensive the cost of the rock. He explained the process for creating a new, deeper level, noting that it was much more efficient to move horizontally than vertically with regard to removal of the rock.

In response to a question from Ms. Meyer, Mr. DeCinque said that the rock extracted during the process of creating the decline is marketable, depending on its quality; however, it can only be sold for commercial projects, once its quality is deemed appropriate for use. Sometimes its quality is not high enough for even commercial purposes, in which case it is used for fill in the mine or on the property. At no time is rock that is taken out during the decline process used for State road projects.

As there were no more questions from the Board, Ms. Moore asked that the opposition, when speaking to the record, address only the Board and that there be no cross-examination of Mr. Hopgood or his clients. She asked that only new comments be brought out in the testimony. Mr. Todd asked to be able to clarify some issues prior to testimony from his clients.

His first question was to Dr. Lusk regarding the number of tons produced with a "3-header" blast, and how much and what type of explosive is used. In response, Dr. Lusk said that a typical header round contained 900 lbs. of ammonium nitrate, which is separated out and placed into a number of blast holes that have been drilled into the rock face. The explosives are shot on separate delays, within a matter of seconds. He said that each 900 lbs. of explosives yields approximately 1,100 tons of rock. Therefore, a "3-header" shot contains 2,700 lbs. of explosives and produces about 3,300 tons of rock per day. If blasting occurs every day, it would produce up to 23,000 tons per week.

Mr. Todd also asked if a road (or roads) would be required to access the vent shaft on the Anderson property. In response, Mr. DeCinque said that it would not be used for safety (i.e., egress) purposes – only for air ventilation. Although there is only one decline into and out of the mine, there are multiple openings to the outside for egress purposes, and there is an internal shaft with a spiral staircase specifically for that purpose. He then explained how the vent shaft is created and how it is reclaimed once mining is completed.

A third question addressed the amount of severance tax paid by Vulcan for the previous year. Mr. Hopgood responded that the 2010 records were not yet available, but \$460,000 was paid to the State of Kentucky for the 2009 tax year. Mr. Todd commented that this equated to approximately \$12 million in gross sales for the year.

Opposition: Prior to hearing testimony from surrounding neighbors/property owners, Mr. Todd displayed a map of the notification area on the overhead projector, noting the number of property owners who were in opposition to Vulcan's request. He said that some of the families had lived in the area for longer than Vulcan had been at this location. Raven Run and Floracliff Nature Sanctuary are also within the notification area, Floracliff being a property just on the other side of the creek. He explained how the Mining and Quarrying Ordinance was drafted over several months, being adopted in December of 1991. Representatives from Vulcan participated in the drafting of the Ordinance, as did Council members, LFUCG staff (including the Law Department) and property owners in the area. Mr. Todd commented that it was interesting that Vulcan's compliance with State regulations was emphasized during Mr. Hopgood's presentation; but no mention of the Mining and Quarrying Ordinance was mentioned, even though they had participated in its creation and adoption.

Mr. Todd asked that copies of all comments be made part of the record and described what could be found on Vulcan's website with regard to their operations, both in Kentucky and nationwide. It was the opposition's contention that Vulcan should not be able to expand because their original purpose (i.e., construction of the interstate) was completed and they should therefore no longer be able to operate in the rural area. There are other sites that are much more accessible to good transportation routes and so are much more efficient and in more acceptable (e.g., industrial) areas of the county.

Mr. Todd said that there were twenty people who wished to address various issues, noting that he would introduce each speaker.

Mary Diane Hanna, 6398 Old Richmond Road, said that her family had been on their property since the 1880s; and contrary to the statement that Vulcan's blasting was minimal (compared to State standards), they do feel the blasting. Their residence was built in the 1880s, and there are cracks in its foundation. She said that the Old Richmond Road Neighborhood Association is an umbrella association for several "neighborhoods" in that part of rural Fayette County, all of whom she represented. The quarry has no business being there, as it is an incompatible business in the rural area, and it has negatively affected people in the area for many years. Ms. Hanna described her attempts to obtain information about Vulcan's Lexington operation(s) from several sources, including Urban County Government records, and her difficulty in obtaining the desired information. She asked that the Board deny this request.

Laurie Lawrence, 6921 Old Richmond Road, was present. She said it was her task to provide a history and timeline of Vulcan's operation at its Old Richmond Road location and distributed handouts to the Board members. She also asked that the Board deny this request.

Win Meeker, 417 Fayette Park, Chair of the Historic Preservation Commission, was present. She noted that Vulcan is mining in one of Fayette County's most historic areas. There are both National Register Districts and National Landmark Properties in the area, and she explained the significance of each. Ms. Meeker said that, in order for Vulcan to expand their operation, they should first obtain a "sign-off" from the SHPO (State Historic Preservation Office) and an amended permit from Frankfort. It was her opinion that this request should be denied.

Jessica Brown, 823 McCall's Mill Road, spoke about the historic and environmental quality of the Elk Lick Creek area. She also provided handouts to the Board. She said that, due to the sensitive nature of Elk Lick Creek, the quarry was an incompatible use in the area. She cited several reasons, as well as several documents to substantiate her observations, and asked the Board to deny this request.

Discussion: After Ms. Brown's presentation, Ms. Moore noted that the meeting would have to end at 6:00 PM, as several Board members had prior commitments. Mr. Todd asked if it would be better to end the meeting at that point, and apologized for the number of speakers and the level of detail in their presentations; however, he felt that it was important for all of them to speak in order to provide a proper, pertinent record of the case. In response, Ms. Moore asked that they begin focusing on the Mining and Quarrying Ordinance and its applicability to the issue at hand. Mr. Todd said that it would take a minimum of 30 minutes for that alone, at which point Ms. Moore said that it might be better to continue the hearing to a later date. She noted that she wanted everyone to have an adequate opportunity to present his or her materials to the Board, as well as each of the Board members to have an opportunity to hear and discuss the case.

Mr. Todd asked that the record be preserved and that no additional evidence be permitted. He also asked that no additional materials be permitted to be filed in the interim. Ms. Moore assured him that the record was what it was; and to the extent that the argument was that Vulcan was in violation of the Mining and Quarrying Ordinance by failing to file appropriate information, they would look at what currently existed.

Mr. Glover said that they wanted to give everyone who wanted to speak a fair and adequate hearing, to the extent that they had something new to add to the discussion. In light of the hour, he thought it not unreasonable to continue the discussion to the following month's meeting. Mr. Todd noted his agreement. Mr. Griggs asked what would be gained by postponing, as Ms. Meyer would be absent from the following meeting, and Mr. Stout had not been present at this hearing. Ms. Moore responded that Mr. Stout would be able to participate, provided he reviewed the record of this case, including the

audio portion.

After much discussion, it was determined that a special meeting would be scheduled, to be held two weeks from that day (i.e., February 11) at 1:00 PM. Ms. Boland verified that no new notice needed to be mailed, as all interested parties were present and would be aware of the continued meeting. She said that a formal motion was required to that effect.

Action: A motion was made by Mr. Glover, seconded by Mr. Griggs and carried unanimously (Stout absent), to schedule a special meeting for Friday, February 11, 2011 at 1:00 PM, to be held in the Council Chamber (if available). If the Chamber was not available, case #C-2010-110 for Vulcan Construction Materials would be continued at the regularly scheduled Board of Adjustment meeting on February 25, with Vulcan to be the first contended item to be discussed.

E. **Administrative Review**

There were none remaining.

- IV. **BOARD ITEMS** – There were no Board items heard at this time.
- V. **STAFF ITEMS** – There were no Staff items presented at this time.
- VI. **NEXT MEETING DATE** - The agenda announced that the next regular meeting date would be February 25, 2011.
- VII. **ADJOURNMENT** - Since there was no further business, the Vice-Chair declared the meeting adjourned at 5:59 PM.

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Louis Stout, Chair

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James Griggs, Secretary